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February 23, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 27, 2006

Case Number: TSO-0438

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concern cited in the letter involves the individual's excessive use of alcohol. According to the letter, a DOE consultant psychologist diagnosed the individual as using alcohol

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<sup>1</sup>/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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habitually to excess, and as suffering from substance abuse, alcohol, an illness which causes or may cause a significant defect in judgment or reliability. In her written report to the DOE, the DOE consultant psychologist indicated that she based this diagnosis on the fact that the individual stated to her that he "continues to drink excessively and becomes intoxicated 'twice a year.'" The DOE consultant psychologist further indicated that in order to demonstrate adequate evidence of rehabilitation or reformation from these conditions, the individual would need "a formal course of rehabilitation consisting of counseling, random urine screening and liver function tests with documented progress." He would also need "to abstain from alcohol for a period of a year while attending the aforementioned counseling." The notification letter also sets forth instances in April 1997 and October 1998 in which the individual was cited for DUI. According to the notification letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J) and 10 C.F.R. 710.8(h)(hereinafter Criterion H).<sup>2</sup>

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented testimony of his wife, a high level supervisor, an intermediate-level supervisor and a co-worker/friend. He also presented testimony from two employee assistance program (EAP)counselors. The DOE counsel presented the testimony of the DOE consultant psychologist.

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2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Criterion H concerns relate to an illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.

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## II. Hearing Testimony

### A. The Individual

The individual admits that he has come to a point in his life where it will be better for him to abstain from all alcohol use. Transcript of Hearing (Tr.) at 82. He has come to this conclusion because he realized that alcohol use was adversely affecting his career and his request for a security clearance, and also because his wife and children are more important to him than use of alcohol. Tr. at 84, 93, 103. He stated that physical fitness is also important to him and that he feels more physically fit if he does not use alcohol. Tr. at 98-99. He testified that his last use of alcohol was at Thanksgiving of 2006. Tr. at 84. He indicated that alcohol is not an important part of his life. Tr. at 86. He stated that his long range intent is never to use alcohol again, but for now, he is taking his resolution one day at a time. Tr. at 85.

With respect to treatment, he stated that he has seen his EAP counselors six to eight times over about a two-month period and expects to continue with that routine. Tr. at 87-88. He stated that he went to see a medical doctor who did not diagnose him with any alcohol problems. Tr. at 134. He also indicated that he went to a counseling center, but that this center, too, did not diagnose him with an alcohol problem. He did not provide any corroboration for these assertions. Tr. at 135. He asserted that he will continue to try to find appropriate group and individual counseling and a suitable Alcoholics Anonymous (AA) group. Tr. at 138, 155.

### B. Individual's Wife

The wife confirmed that the individual last used alcohol on Thanksgiving day (of 2006). She indicated that he told her at that time that he planned not to use alcohol any longer because it was not making him feel well mentally and physically. Tr. at 15. She does not believe that the individual currently has a problem with alcohol abuse. She stated in this regard that they are both very busy with their careers and raising their children so that they do not have time to spend using alcohol. Tr. at 18. She supports his efforts to abstain from alcohol and will not offer him alcohol or press him to use it. Tr. at 24-25.

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C. Individual's Supervisors; Co-Worker/Friend

1. High-Level Supervisor

The individual's high-level supervisor has known him for about ten years and sees him at work about two or three times a week. He sees the individual socially about three or four times a year. Tr. at 34. The last time they socialized, about two months ago, he noted that the individual was drinking a soft drink. Tr. at 35. He does not believe that the individual is currently using alcohol and noted that the individual specifically mentioned to him that he has ceased alcohol use. Tr. at 36, 38. He testified that the individual is a good performer on the job, that he was recently promoted, and that there has never been an issue of on-the-job alcohol use. Tr. at 44-45.

2. Mid-Level Supervisor

The individual's mid-level supervisor has known him for about ten years and sees him on the job about three times a week. He sees him outside of work about ten times a year. Tr. at 50-51. Within the last year, he recalls that the individual was not using alcohol at a party. Tr. at 53. He indicated that the individual told him that he had stopped using alcohol about two or three months ago because his job and his family were more important to him than using alcohol. Tr. at 57.

3. Co-Worker/Friend

This witness has known the individual for about twelve years, and they have been working together for six years. Tr. at 59. He sees the individual for several days at a time on a shift, and sees him off-duty, socially, about once or twice a week. Tr. at 61-62. He believes that the individual is not currently using alcohol and that he stopped at least one month ago, although he is unable to provide a precise date when that abstinence period began. Tr. at 67-68.

D. EAP Counselors

1. EAP Counselor #1

This witness is a certified employee assistance professional with substance abuse training. Tr. at 106. She stated that she first saw the individual around Thanksgiving time, and advised the individual to seek the advice of his medical doctor and to seek alcohol counseling. Tr. at 107, 109. She has also encouraged him

to attend AA, and stated that she was working with him to find an AA group in which he feels comfortable, and to find other programs that are suitable for him. Tr. at 107-109. She indicated that she does not "treat" clients but rather seeks out references for them to help them get the appropriate treatment. Tr. at 112. She would like to see the individual receive counseling and suitable treatment on a regular basis for the next six to twelve months, and find an appropriate AA group. Tr. at 114. She believes that he has made important changes in his life and needs some continuing education to reinforce those changes. Tr. at 140.

## 2. EAP Counselor #2

This witness has a masters degree in counseling and is a licensed social worker and alcohol and drug counselor. Tr. at 117. He was involved in two counseling sessions with the individual. Tr. at 119. He believes that the individual's history of DUIs and other alcohol-related incidents shows some problem with alcohol use. Tr. at 121. However, he believes that the individual has matured, and now understands what is important to him, compared with earlier periods in his life when he used alcohol excessively. Tr. at 124. He has confidence in the individual's resolve to remain abstinent from alcohol. Tr. at 125, 132. He believes that the individual needs a strong support network, including his wife, co-workers and AA.

## E. The DOE Consultant Psychologist

After listening to the testimony of all the above witnesses, the DOE consultant psychologist reiterated her diagnosis that the individual abused alcohol and needed to demonstrate one year of abstinence and undergo a year of alcohol education and counseling to establish rehabilitation. She was convinced that the individual had maintained abstinence for the period since November 2006, for two months at the time of the hearing. She believes that the individual is currently in "early partial remission," and that this means he is on the "right track." Tr. at 142-144. She indicated that the individual has matured and has a good support system. She believes that this support system which includes his home life, his children and his job bodes well for him to be successful. Tr. at 155.

Nevertheless, she testified that the individual still needs to take part in a counseling program and undergo random screening. Tr. at 144-45. She testified that an appropriate program would be alcohol abstinence for one year and a formal counseling for one year. She believed that the EAP counselors had so far provided him with about

two months of education. Tr. at 148-51. She was therefore not persuaded that he had shown rehabilitation as of the date of the hearing, and believed that an additional ten months would be appropriate. Tr. at 151.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

### IV. Analysis

The issue in this case is whether the individual has mitigated the Criteria J and H security concerns, by demonstrating that he is reformed and/or rehabilitated from alcohol abuse. As discussed below, I find that the individual has not yet resolved the concerns.

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I believe that, as he contends, the individual has abstained from alcohol since Thanksgiving 2006. The individual's wife testified convincingly in this regard, as did his co-worker/friend. These witnesses see him most frequently outside work, and are in a good position to give reliable testimony on this matter. Further, the witnesses who see him somewhat less frequently outside work, his supervisors, also corroborated the individual's testimony that he has been abstinent since November 2006. However, as of the date of the hearing, the individual had maintained an abstinence period of only about two months. This is short of the year-long period recommended by the DOE consultant psychologist, which seems to be a reasonable abstinence period in this case.

Moreover, the individual has not begun a regular alcohol education/counseling program. Although he has taken steps towards that goal, with the EAP counselors aiding him in this regard, he has not completed that aspect of his rehabilitation. The DOE consultant psychologist and the EAP counselors all agreed on this point.

Overall, I agree with the DOE consultant psychologist and the EAP counselors that the individual had completed about two months of rehabilitation towards the recommended year-long program. Therefore, I find that the individual has made some important progress. However, I do not believe that he has shown he has resolved the concerns regarding his alcohol abuse at this time.

#### V. CONCLUSION

As the foregoing indicates, the individual has not resolved the Criteria H and J security concerns cited in the Notification Letter. It is therefore my decision that the individual should not be granted access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: February 23, 2007